

STATEMENT OF MANAGERS

SUMMARY OF MAJOR PROVISIONS

Monday—November 1, 1999

TITLE I - FACILITATING AFFILIATIONS AMONG BANKS, SECURITIES FIRMS, AND INSURANCE COMPANIES

The legislation approved by the Conference Managers eliminates many Federal and State law barriers to affiliations among banks and securities firms, insurance companies, and other financial service providers. The House and Senate bills established an identical statutory framework (except for minor drafting differences) pursuant to which full affiliations can occur between banks and securities firms, insurance companies, and other financial companies. The Conferees adopted this framework. Furthermore, the legislation provides financial organizations with flexibility in structuring these new financial affiliations through a holding company structure, or a financial subsidiary (with certain prudential limitations on activities and appropriate safeguards). Reflected in the legislation is the determination made by both Houses to preserve the role of the Board of Governors of the Federal Reserve System (the "Federal Reserve Board" or the "Board") as the umbrella supervisor for holding companies, but to incorporate a system of functional regulation designed to utilize the strengths of the various Federal and State financial supervisors. Incorporating provisions found in both the House and Senate bills, the legislation establishes a mechanism for coordination between the Federal Reserve Board and the Secretary of the Treasury ("the Secretary") regarding the approval of new financial activities for both holding companies and national bank financial subsidiaries. The legislation enhances safety and soundness and improves access to financial services by requiring that banks may not participate in the new financial affiliations unless the banks are well capitalized and well managed. The appropriate regulators are given clear authority to address any failure to maintain these safety and soundness standards in a prompt manner. The legislation also requires that Federal bank regulators prohibit banks from participating in the new financial affiliations if, at the time of certification, any bank affiliate had received a less than "satisfactory" Community Reinvestment Act of 1977 ("CRA") rating as of its most recent examination.

SUBTITLE A - FINANCIAL AFFILIATIONS

Senate Position: The Senate bill contains provisions repealing restrictions in the Glass-Steagall Act and the Bank Holding Company Act of 1956 ("BHCA") on affiliations involving securities firms and insurance companies, respectively. The Senate bill establishes a new framework in section 4 of the BHCA for bank holding companies to engage in financial activities. It does not create a separate designation for bank holding companies engaged in the new financial activities but it does require that the subsidiary insured depository institutions of such holding companies be well capitalized and well managed in order to take advantage of the new activities. In the event that a bank holding company's subsidiary depository institutions fall out of compliance, a "cure" procedure is established. The Senate bill authorizes bank holding companies to engage in activities that the Federal Reserve Board has determined to be financial in nature and incidental

to such financial activities. It also authorizes qualifying bank holding companies to engage in activities that the Federal Reserve Board determines are complementary to financial activities, or any other service that the Federal Reserve Board determines not to pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. It contains a list of pre-approved activities that includes merchant banking and insurance company portfolio investment activities. There is also a grandfather provision for the commodities activities engaged in by a company as of September 30, 1997, if that company becomes a bank holding company after the date of enactment.

House Position: The House bill also repeals the restrictions contained in the Glass-Steagall Act on affiliations between banks and securities firms engaged in underwriting and in the BHCA on affiliations between banks and insurance companies and insurance agents. It creates a new section 6 of the BHCA which authorizes new financial activities for bank holding companies that qualify as "financial holding companies." In order for a bank holding company to qualify as a financial holding company ("FHC"), its subsidiary depository institutions must be well managed, well capitalized, and have received at least a "satisfactory" CRA rating as of their last examination. In the event that an FHC falls out of compliance, a "cure" procedure is established. It authorizes FHCs to engage in activities that the Federal Reserve Board has determined to be financial in nature, incidental to such financial activities or complementary to financial activities to the extent that the amount of such complementary activities remains small. It contains a list of pre-approved activities that includes investment banking and insurance company portfolio investment activities. The House bill also authorizes FHCs to engage in developing activities to a limited extent. A ten-year grandfather is included for the nonfinancial activities of companies that become bank holding companies after enactment of this legislation and are predominantly financial in nature at the time they become FHCs.

Conference Substitute: The Conferees acceded to the Senate by agreeing to amend section 4 of the BHCA to add a series of new subsections that contain the framework for engaging in new financial activities. The Conferees have acceded to the House in designating as FHCs those bank holding companies qualifying to engage in the new financial activities.

New section 4(k) permits bank holding companies that qualify as FHCs to engage in activities, and acquire companies engaged in activities, that are financial in nature or incidental to such financial activities. FHCs are also permitted to engage in activities that are complementary to financial activities if the Federal Reserve Board determines that the activity does not pose a substantial risk to the safety or soundness of depository institutions or the financial system in general.

Permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking. The Board has primary jurisdiction for determining what activities are financial in nature, incidental to financial in nature, or complementary. The Board may act by regulation or order. In determining what activities are financial in nature or incidental, the Federal Reserve Board must notify the Secretary of applications or requests to engage in new financial activities. The Federal Reserve Board may not determine that an

activity is financial or incidental to a financial activity if the Secretary objects. The Secretary may also propose to the Federal Reserve Board that the Board find that a particular activity is financial in nature or incidental to a financial activity. A similar procedure is included in the legislation with regard to the determination of financial activities and activities that are incidental to financial activities for financial subsidiaries of national banks. The intent of the Conferees is that the Federal Reserve Board and the Secretary of the Treasury will establish a consultative process that will negate the need for either agency to veto a proposal of the other agency. Establishing such a process should bring balance to the determinations regarding the type of activities that are financial and limit regulatory arbitrage.

Section 4(k) contains a list of activities that are considered to be financial in nature. An FHC may engage in the activities on this list without obtaining prior approval from the Federal Reserve Board. Notice must be given to the Federal Reserve Board not later than 30 days after the activity is commenced or a company is acquired. The list includes securities underwriting, dealing, and market making without any revenue limitation such as sponsoring and distributing all types of mutual funds and investment companies. Other activities include insurance underwriting and agency activities, merchant banking, and insurance company portfolio investments. The reference to "...insuring, guaranteeing or indemnifying against...illness," is meant to include activities commonly thought of as health insurance, including such activities when provided by companies such as Blue Cross and Blue Shield organizations which are licensed under State laws to provide health insurance benefits in consideration of the payment of premiums or subscriber contributions. Such reference is not meant to include the activity of directly providing health care on a basis other than to the extent that it may be incidental to the business of insurance as defined in section 4(k)(4)(B) of the BHCA.

Merchant banking

The authorization of merchant banking activities as provided in new section 4(k)(4)(H) of the BHCA is designed to recognize the essential role that these activities play in modern finance and permits an FHC that has a securities affiliate or an affiliate of an insurance company engaged in underwriting life, accident and health, or property and casualty insurance, or providing and issuing annuities, to conduct such activities. Under this provision, the FHC may directly or indirectly acquire or control any kind of ownership interest (including debt and equity securities, partnership interests, trust certificates, or other instruments representing ownership) in an entity engaged in any kind of trade or business whatsoever. The FHC may make such acquisition whether acting as principal, on behalf of one or more entities (e.g., as adviser to a fund, regardless of whether the FHC is also an investor in the fund), including entities that the FHC controls (other than a depository institution or a subsidiary of a depository institution), or otherwise.

Section 122 provides that after a 5 year period from the date of enactment, the Board and the Secretary may jointly adopt rules permitting financial subsidiaries to engage in the activities under section 4(k)(4)(H) of the BHCA subject to the conditions that the agencies may jointly determine.

Insurance company portfolio investments

New section 4(k)(4)(I) of the BHCA recognizes that as part of the ordinary course of business, insurance companies frequently invest funds received from policyholders by acquiring most or all the shares of stock of a company that may not be engaged in a financial activity. These investments are made in the ordinary course of business pursuant to state insurance laws governing investments by insurance companies, and are subject to ongoing review and approval by the applicable state regulator. Section 4(k)(4)(I) permits an insurance company that is affiliated with a depository institution to continue to directly or indirectly acquire or control any kind of ownership interest in any company if certain requirements are met. The shares held by such a company: (i) must not be acquired or held by a depository institution or a subsidiary of a depository institution; (ii) must be acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty (other than credit-related insurance) or in providing and issuing annuities; and (iii) must represent an investment made in the ordinary course of business of such insurance company in accordance with relevant state law governing such investments. In addition, during the period such ownership interests are held, the FHC must not routinely manage or operate the portfolio company except as may be necessary or required to obtain a reasonable return on the investment. To the extent an FHC participates in the management or operation of a portfolio company, such participation would ordinarily be for the purpose of safeguarding the investment of the insurance company in accordance with the applicable requirements of state insurance law. This is irrespective of any overlap between board members and officers of the FHC and the portfolio company.

CONDITIONS TO ENGAGE IN NEW ACTIVITIES

New section 4(l) of the BHCA establishes the requirements for permitting a bank holding company to engage in the new financial activities and affiliations. A bank holding company may elect to become a financial holding company if all of its subsidiary banks are well capitalized and well managed. A bank holding company that meets such requirements may file a certification to that effect with the Board and a declaration that the company chooses to be an FHC.

After the filing of such a declaration and certification, an FHC may engage either de novo, or through an acquisition, in any activity that has been determined by the Board to be financial in nature or incidental to such financial activity. FHCs may engage in activities on the preapproved list of financial activities contained in section 4(k) of the BHCA and any other financial activity approved by the Board without prior notice. Complementary activities, however, must be approved by the Board on a case-by-case basis under the notice procedures contained in section 4(j) of the BHCA.

The legislation also amends the CRA to provide that an election of a bank holding company to become an FHC shall not be effective if the Board finds that as of the date of the election not all of the subsidiary insured depository institutions of the holding company had received a "satisfactory" or better CRA rating at their most recent CRA examinations. In

addition, the legislation amends the BHCA to require the appropriate Federal banking agency to prohibit an FHC, or a bank through a financial subsidiary, from commencing any new activities or acquiring any companies under sections 4(k) or (n) of the BHCA, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act, in the event that the bank or any of its insured depository institution affiliates or any insured depository institution affiliate of the FHC fails to have at least a “satisfactory” CRA rating at the time of its last examination. It is the most recent rating alone that shall be looked to by the regulator in connection with these provisions. This provision does not authorize any agency to require the divestiture of any company already owned by the FHC prior to the time that the prohibition becomes effective or to limit in any way any activity already engaged in by the FHC prior to that time. The prohibition ceases to apply once all of the insured depository institutions controlled by the FHC or the bank and all of its insured depository institution affiliates have restored their CRA performance rating to at least the “satisfactory” level.

This provision applies to the ownership and activities of financial subsidiaries of national banks to the same extent as it applies to FHCs. It also applies in the same way to subsidiaries held by insured State banks subject to newly added section 46(a) of the Federal Deposit Insurance Act.

OPERATION OF STATE LAW

Senate Position: The Senate bill establishes in section 104 the parameters for the appropriate balance between Federal and State regulation of the activities and affiliations allowed under this legislation.

House Position: The House provision is similar, with parallel provisions contained in sections 104, 301, and 302 of the House bill.

Conference Substitute: The House agreed to incorporate its sections 301 and 302 into section 104, and the Senate agreed to adopt the language of the House’s section 302. The House discrimination standard was adopted with modifications, and the Conferees agreed to incorporate House provisions protecting the ability of the States to require restoration of an entity’s capital, and restricting changes in stock ownership of demutualizing insurers, as modified. The House receded on its provision specifically addressing a North Carolina Blue-Cross Blue-Shield organization, as the State laws governing those types of entities would not be preempted so long as the State laws do not discriminate, as set forth in the legislation.

This section reaffirms the McCarran-Ferguson Act, recognizing the primacy and legal authority of the States to regulate insurance activities of all persons. No persons are permitted to engage in the business of insurance unless they are licensed by the States, as required under State law. States are not allowed to prevent certain affiliations or activities or discriminate against depository institutions in providing such insurance licenses.

In general, States are not allowed to prevent or restrict affiliations permitted under Federal law. With respect to an affiliation by an insurer, States may collect information, and the insurer's State of domicile may take action on the affiliation (including approval or disapproval), but only within 60 days of receiving notice of the affiliation, and only if the actions do not discriminate against the insurer based on an association with a depository institution. An affiliating insurer's State of domicile may require capital restoration to the level required under State law, so long as such request is made within 60 days of notice of the affiliation. Any State, as permitted under State law, may restrict changes in ownership of a demutualizing insurer so long as the restrictions are not discriminatory as set forth in the legislation. Section 104(c)(2)(C) means that State laws and State regulators shall not discriminate against depository institutions or their affiliates with respect to acquiring or otherwise changing the ownership of stock in newly demutualized insurance companies relative to other persons.

Except with respect to insurance, States may not prevent or restrict a depository institution or affiliate thereof from engaging in any activity set forth under the Gramm-Leach-Bliley Act. With respect to insurance sales, solicitations, and cross-marketing, States may not prevent or significantly interfere with the activities of depository institutions or their affiliates, as set forth in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996). However, State restrictions that are substantially the same as but no more burdensome than the thirteen general safe harbors provided are not subject to potential preemption. States are also allowed to continue the regulation of insurance activities other than sales, solicitation, and cross-marketing, and the preemption standard does not apply to such regulation if consistent with the standards set forth in the legislation.

State regulation other than of insurance or securities activities is not preempted even if it does prevent or restrict an activity so long as it does not discriminate. The Conferees adopted the House discrimination standard with respect to insurance activities. The discrimination standard does not apply to State regulations governing insurance sales, solicitations, or cross-marketing activities adopted before September 3, 1998, and does not apply to State regulations that are substantially the same as but no more burdensome than the safe harbors. State securities regulation is not preempted by the "prevent or restrict" standard with regard to a State securities commission's ability to investigate and enforce certain unlawful securities transactions or to require the licensure or registration of securities and securities brokers, dealers, and investment advisors and their associates. State actions of general corporate applicability applying to companies domiciled or incorporated in the State are also protected from the "prevent or restrict" preemption, as well as State laws similar to the antitrust laws, so long as the State actions are not inconsistent with the intent of this Act to permit affiliations. The term "depository institution" is defined as including foreign banks and their domestic affiliates and subsidiaries. The term "affiliate" is defined for section 104 to include any person under common control (including a subsidiary).

SUBTITLE B - STREAMLINING SUPERVISION OF BANK HOLDING COMPANIES

Both the House and Senate bills generally adhere to the principle of functional regulation, which holds that similar activities should be regulated by the same regulator. Different regulators have expertise at supervising different activities. It is inefficient and impractical to expect a regulator to have or develop expertise in regulating all aspects of financial services. Accordingly, the legislation intends to ensure that banking activities are regulated by bank regulators, securities activities are regulated by securities regulators, and insurance activities are regulated by insurance regulators.

In keeping with the Board's role as an umbrella supervisor, the legislation provides that the Board may require any bank holding company or subsidiary thereof to submit reports regarding its financial condition, systems for monitoring and controlling financial and operating risks, transactions with depository institutions, and compliance with the BHCA or other Federal laws that the Board has specific jurisdiction to enforce. The Board is directed to use existing examination reports prepared by other regulators, publicly reported information, and reports filed with other agencies, to the fullest extent possible.

The Board is authorized to examine each holding company and its subsidiaries. It may examine functionally regulated subsidiaries only if: (1) the Board has reasonable cause to believe that such a subsidiary is engaged in activities that pose a material risk to an affiliate depository institution; (2) it reasonably believes after reviewing the relevant reports that examining the subsidiary is necessary to adequately inform the Board of the systems for monitoring risks; or, (3) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with the BHCA or other Federal law that the Board has specific jurisdiction to enforce and the Board cannot make such a determination through examination of an affiliated depository institution or the holding company. The Board is directed to use, to the fullest extent possible, examinations made by appropriate Federal and State regulators.

The Board is not authorized to prescribe capital requirements for any functionally regulated subsidiary that is in compliance with applicable capital requirements of another Federal regulatory authority, a State insurance authority, or is a registered investment adviser or licensed insurance agent. The legislation also makes it clear that securities and insurance activities conducted in regulated entities are subject to functional regulation by the relevant State securities authorities, the Securities and Exchange ("SEC"), or State insurance regulators.

The Board is prohibited from requiring a broker-dealer or insurance company that is a bank holding company to infuse funds into a depository institution if the company's functional regulator determines, in writing, such action would have a material adverse effect on the broker-dealer or insurance company. If the functional regulator makes such a determination, the Board may require the holding company to divest its depository institution. All the Federal banking agencies are subject to the same limits on reports, examinations and capital requirements for functionally regulated affiliates which apply to the Board. This ensures that the Office of the

Comptroller of the Currency (“OCC”), the Office of Thrift Supervision (“OTS”), and the Federal Deposit Insurance Corporation (“FDIC”) will not be able to assume and duplicate the function of being the general supervisor over functionally regulated subsidiaries. The legislation specifically preserves, however, the FDIC’s authority to examine a functionally regulated affiliate. This authority, which should be used sparingly, is necessary to protect the deposit insurance funds.

The legislation also specifically addresses indirect action by the Board against functionally regulated affiliates. Consistent with functional regulation, the Board’s authority to take indirect action against a functionally regulated affiliate is limited. The Board may not promulgate rules, adopt restrictions, safeguards or any other requirement affecting a functionally regulated affiliate unless the action is necessary to address a “material risk” to the safety and soundness of the depository institution or the domestic or international payments system and it is not possible to guard against such material risk through requirements imposed directly upon the depository institution.

The Federal banking regulators are empowered to adopt prudential safeguards governing transactions between depository institutions, their subsidiaries and affiliates so as to avoid, among other items, significant risk to the safety and soundness of the institution. The regulators are required to review these safeguards regularly and modify or eliminate those requirements which are no longer necessary.

Bank holding companies may elect to become FHCs by meeting the statutory requirements and filing a declaration and a certification with the Board. The legislation makes it clear that a duplicative registration statement under section 5 of the BHCA is not required. The integrity of the deposit insurance funds is preserved by prohibiting the use of deposit insurance funds to benefit any shareholder, subsidiary or nondepository affiliate of an FHC. This section ensures that the federal safety net is not extended to persons who are not entitled to Federal deposit insurance coverage.

The savings bank restrictions in the BHCA are repealed. This repeal is designed to conform the regulation of savings bank life insurance to other provisions of Federal banking law.

The Conferees intend that the Board be flexible in its application of holding company consolidated capital standards for the leverage requirement and the timing of the asset calculations to FHCs of which the predominant regulated subsidiary is a broker-dealer. The Conferees intend that, to the extent the Board deems feasible and consistent with the overall financial condition and activities of the holding company, the capital requirements for such holding companies be consistent with the capital standards applied by the SEC to the broker-dealer, which accounts for the predominant amount of assets and activities of the holding company.

SUBTITLE C - SUBSIDIARIES OF NATIONAL BANKS

Senate Position: The Senate bill authorizes a national bank to control a subsidiary engaged in financial activities permissible for a bank holding company (but not permissible for a national bank directly) under section 4(k) if the bank has consolidated total assets not exceeding \$1 billion, is not affiliated with a bank holding company, is well capitalized, and well managed. For the purpose of determining a parent national bank's regulatory capital, a deduction from assets and tangible equity is required for the amount of outstanding equity investments made in a financial subsidiary. In addition, the assets and liabilities of the financial subsidiary must not be consolidated with those of the parent bank. Equity investments in the operating subsidiary by a parent national bank must not exceed the amount the bank could pay as a dividend without obtaining prior regulatory approval. The Senate bill also clarifies that a national bank may conduct through a subsidiary any activity which the national bank may engage directly and any activity lawfully conducted as of the date of enactment of this legislation.

House Position: The House bill authorizes a national bank subsidiary to engage only in activities permissible for national banks to engage in directly, activities otherwise expressly authorized by statute, and activities that are financial in nature or incidental to financial activities. Financial activities are defined as those activities permissible for an FHC or activities that the Secretary of the Treasury determines to be financial in nature or incidental to financial activities in consultation and coordination with the Federal Reserve Board. Excluded from the list of permissible financial activities are insurance underwriting, insurance company portfolio investments, and real estate investment and development. National bank operating subsidiaries also may engage in developing activities. In order for a national bank operating subsidiary to engage in activities that are financial in nature, its parent bank and all its depository institution affiliates must be well capitalized, well managed, and have a satisfactory CRA rating. A cure procedure is established to address situations where there is a failure to comply with these conditions. It also requires that the aggregate amount of the national bank parent's equity investments in the bank be deducted from the bank's capital including the operating subsidiary's retained earnings. In addition, the assets and liabilities of the subsidiary must not be consolidated with those of its parent bank. Equity investments in the operating subsidiary by a parent national bank must not exceed the amount the bank could pay as a dividend without obtaining prior regulatory approval.

Conference Substitute: The Senate receded to the House with an amendment.

Under the amendment, national banks of any size are permitted to engage through a financial subsidiary only in financial activities (with exceptions) authorized by this Act. Section 121 specifically excludes four types of activities for financial subsidiaries: insurance or annuity underwriting, insurance company portfolio investments, real estate investment and development,

and merchant banking (subject to section 122). These types of financial activities may only be done in FHC affiliates. The federal banking regulators are prohibited from interpreting these provisions to provide for any expansion of these activities contrary to the express language of this statute. It is the intent of the Conferees that these new statutory provisions - and the regulations to be adopted pursuant thereto - supercede and replace the OCC's Part 5 regulations on operating subsidiaries.

SUBTITLE D - PRESERVATION OF FTC AUTHORITY

Section 131. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.

Senate Position: No provision.

House Position: Section 141 of the House amendment amends section 11(b)(1) of the BHCA (12 U.S.C. section 1849(b)(1)) to provide for notice to the Federal Trade Commission ("FTC") when the Board of Governors of the Federal Reserve System approves a transaction under section 3 of the BHCA if that transaction also involves a transaction under section 4 or 6 of the BHCA.

Conference Substitute: The Senate receded to the House with an amendment.

Under section 131 of the Conference Report, the modification simply eliminated the reference to section 6 because the new activities for FHCs are now included within section 4 of the BHCA as amended by the Conference Report. The FTC currently has no role in reviewing pure section 3 transactions, and this amendment does not change that. However, the FTC does perform reviews of certain section 4 transactions. This amendment will simply allow the FTC to coordinate its review with the Board in those cases that also involve a section 3 transaction.

Section 132. Interagency data sharing.

Senate Position: No provision.

House Position: Section 142 of the House amendment provided that, except as otherwise prohibited by law, the banking regulators who review mergers or acquisitions (the OCC, the OTS, the FDIC, and Federal Reserve Board) shall make available to the antitrust agencies (the Department of Justice and the Federal Trade Commission ("FTC")) any information in the bank regulators' possession that the antitrust agencies deem necessary for their antitrust review under sections 3, 4, or 6 of the BHCA, section 18(c) of the Federal Deposit Insurance Act, the National

Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

Conference Substitute: The Senate receded to the House with an amendment.

Under section 132 of the Conference Report, the modification eliminated the reference to section 6 of the BHCA because the new activities for FHCs are now included within section 4 of the BHCA as amended by the Conference Report. In addition, the modification added new sections 132(b) and 132(c). New section 132(b) requires that any information shared under this provision be kept confidential; that before any information shared under this provision is disclosed to a third party, the agency which shared it must be notified in writing and given a chance to oppose or limit the disclosure; that any sharing under this provision does not affect any claim of privilege with respect to such information; and that nothing in this section shall be construed to limit access to any information by the Congress or the Comptroller General. New section 132(c) simply applies the provisions of new section 132(b) to the sharing of information between Federal banking agencies and State regulators or any other party.

In the past, there have been difficulties with banking agencies sharing bank examination reports with the antitrust agencies because of doubts about whether they had sufficient authority to do so. The reports have generally been shared in the end. However, in cases of failing institutions in which review has been expedited or of institutions taken over by the government, delays in providing these reports have sometimes impeded antitrust review. This language simply allows all of the involved agencies to do their respective tasks in the most expeditious manner possible.

Section 133. Clarification of status of subsidiaries and affiliates.

Senate Position: No provision.

House Position: Section 143(a) of the House amendment provided that subsidiaries or affiliates of banks or savings associations which are not themselves banks or savings associations shall not be treated as banks or savings associations for purposes of the FTC Act or any other law enforced by the FTC. Section 143(b) clarified that nothing in this section shall be construed as restricting the authority of any Federal banking agency.

Section 143(c) amended the existing BHCA exceptions to the Hart-Scott-Rodino ("H-S-R") Act, 15 U.S.C. section 18a(c)(7) and 18a(c)(8). Under current law, transactions subject to approval under section 3 of the BHCA are exempt from H-S-R review. Likewise, assuming certain conditions are met, transactions subject to approval under section 4 are also exempt. The

amendments in section 143(c) clarified that when FHCs acquire other FHCs and either of those companies was involved in new activities under section 6 of the BHCA as amended by the House amendment, the portion of the transaction involving those section 6 activities would be subject to H-S-R review. However, the remainder of the transaction will continue to be reviewed under the existing BHCA.

Conference Substitute: The Senate receded to the House with modifications.

Under section 133 of the conference report, the modification to section 133(a) clarified that the language applied to any provision of law applied by the FTC under the FTC Act. This clarification makes it clear that the section is limited to laws that the FTC currently enforces and is not intended to provide authority to enforce any new statutes. Under current law, section 5(a)(2) of the FTC Act prohibits the FTC from enforcing the Act against banks or savings associations. The conference report will, however, allow these entities to acquire other kinds of businesses, for example, securities firms, against which the FTC can currently enforce the Act. This provision simply makes it clear that these kinds of businesses do not fall within the bank or savings association exemption because they are owned by such an entity.

There was no modification to the savings provision contained in section 133(b).

The modification to section 133(c) replaced the reference to section 6 of the BHCA as amended by the House amendment with a reference to section 4(k) of the BHCA as amended by the conference report. Under the conference report, section 4(k) now contains the language allowing FHCs to engage in new activities. This amendment to the H-S-R exemptions will allow the antitrust agencies to continue to review mergers between insurance companies, securities firms, and other businesses newly allowed to FHCs as they are today, notwithstanding the ownership interest of the FHC. This clarification for the new FHC structure is consistent with, and does not disturb, existing law and precedents under which mergers involving complex corporate entities, some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not, are considered according to agency jurisdiction over their respective parts, so that normal H-S-R Act requirements apply to those parts that do not fall within the specialized agency's specific authority. *See* 16 C.F.R. section 802.6.

Annual GAO report (section 144 of the House amendment).

Senate Position: No provision.

House Position: Section 144 of the House amendment provided for the General Accounting Office to submit an annual report to Congress on market concentration in the financial services industry for each of the next five years.

Conference Substitute: The House receded to the Senate.

SUBTITLE E - NATIONAL TREATMENT

Section 141. Foreign Banks that are Financial Holding Companies.

Senate Position: The Senate bill, at section 151, permits termination of the financial grandfathering authority granted by the International Banking Act and other statutes to foreign banks to engage in certain financial activities. Foreign banks with grandfathered financial affiliates would be permitted to retain these grandfathered companies on the same terms that domestic banking organizations are permitted to establish them.

House Position: The House amendment, at section 151, is similar.

Conference Substitute: The Senate receded to the House.

Section 142. Representative offices.

Senate Position: The Senate bill, at section 152, requires prior approval by the Federal Reserve Board for the establishment of representative offices that are subsidiaries of a foreign bank.

House Position: The House bill, at section 153, contains the same provision.

Conference Substitute: The Senate receded to the House.

SUBTITLE F - DIRECT ACTIVITIES OF BANKS

Senate Position: The Senate bill authorizes national banks to deal in, underwrite, and purchase municipal bonds for their own investment accounts.

House Position: The House amendment is identical.

Conference Substitute: The House receded to the Senate.

TITLE II

SUBTITLE A - BROKERS AND DEALERS

Senate Position: The Senate bill repeals the exemptions from the definition of broker and dealer under the Federal securities laws that currently apply to banks, generally subjecting banks and their affiliates and subsidiaries to the same regulation as all other providers of securities products. However, the Senate bill replaces the general bank exemption with specific exemptions for certain bank activities.

House Position: The House amendment also repeals the general bank exemptions from the definition of broker and dealer under the Federal securities laws but provides more limited exemptions than does the Senate bill.

Conference Substitute: Subtitle A of title II of the Gramm-Leach-Bliley Act provides for functional regulation of bank securities activities. The Conferees retained certain limited exemptions to facilitate certain activities in which banks have traditionally engaged. These exceptions relate to third-party networking arrangements, trust activities, traditional banking transactions such as commercial paper and exempted securities, employee and shareholder benefit plans, sweep accounts, affiliate transactions, private placements, safekeeping and custody services, asset-backed securities, derivatives, and identified banking products.

The Conferees provided for an exception for networking arrangements between banks and brokers. Revisions to Rule 1060 recently approved by the National Association of Securities Dealers (“NASD”) are in conflict with this provision. As a consequence, revisions to the rule should be made to exempt banks and their employees from the provisions’ coverage.

The Conferees provided that banks that effect transactions in a trustee or fiduciary capacity under certain conditions will be exempt from registration under the Federal securities laws if the bank: (1) is chiefly compensated by means of administration and certain other fees, including a combination of such fees, and (2) does not publicly solicit brokerage business. The Conferees expect that the SEC will not disturb traditional bank trust activities under this provision.

The Conferees also provided that classification of a particular product as an identified banking product shall not be construed as a finding or implication that such product is or is not a security for purposes of the securities laws, or is or is not a transaction for any purpose under the Commodity Exchange Act. The Conferees do not intend in the Gramm-Leach-Bliley Act to express an opinion upon or to address the issue of legal certainty for swap agreements under the securities and commodity exchange laws.

The Conferees also provided that the Commodity Exchange Act is not amended by the Gramm-Leach-Bliley Act, and no transaction or person which is otherwise subject to the jurisdiction of the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act is exempted from such jurisdiction because of the provisions of the Gramm-Leach-Bliley Act.

For new hybrid products, the Conferees codified in the securities laws a process that requires the SEC to act by rulemaking prior to seeking to regulate any bank sales of any such new product. This rulemaking process is designed to give notice to the banking industry in an area that could involve complex new products with many elements.

The process contemplated by the Conferees would work as follows. Prior to seeking to require a bank to register as a broker or dealer with respect to sales of any new hybrid product, the SEC would have to engage in a rulemaking. In its rulemaking, the SEC would need to find that the new product is a security. In addition, the SEC would have to determine that the product is a "new hybrid product."

A new hybrid product is not one of the products listed in the definition of "identified banking product". Including a product on the list of identified banking products shall not be construed as a finding or implication that such product is or is not a security, but it would not be a new hybrid product. The Conferees codified the definition of Identified Banking Products as a freestanding provision of law, neither in the securities laws nor in the banking laws.

In addition, during the rulemaking process, the SEC must also make a number of findings. When considering whether such an action is in the public interest, the SEC must also consider whether the action will promote efficiency, competition and capital formation, as set forth in section 3(f) of the Securities Exchange Act of 1934 ("Exchange Act"). The Conferees note that the SEC's record in implementing section 3(f) has failed to meet Congressional intent. The Conferees expect that the SEC will improve in this area.

Prior to commencing a rulemaking process, the SEC is required to consult with and seek the concurrence of the Federal Reserve Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the SEC shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

If the Board seeks review of any final regulation under this section, such review will serve as a stay on the rulemaking until final adjudication of the matter between the SEC and the Board. In considering such an appeal, the United States Court of Appeals for the District of Columbia Circuit shall determine to affirm and enforce or set aside a regulation of the SEC under this subsection, based on the determination of the court as to whether: (1) the subject product is a

new hybrid product; (2) the subject product is a security; (3) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the SEC nor to the Board.

SUBTITLE B - BANK INVESTMENT COMPANY ACTIVITIES

Senate Position: No provision.

House Position: The House bill amends the Investment Advisers Act and the Investment Company Act to subject banks that advise mutual funds to the same regulatory scheme as other advisers to mutual funds. It also requires banks to make additional disclosure when a fund is sold or advised by a bank.

Conference Substitute: The Senate recedes to the House provision with an amendment.

SUBTITLE C - SECURITIES AND EXCHANGE COMMISSION SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES

Senate Position: No provision.

House Position: The House amendment creates a new investment bank holding company structure under the Exchange Act. This subtitle is designed to implement a new concept of SEC supervision of broker/dealer holding companies (that do not control depository institutions with certain exceptions) that voluntarily elect SEC supervision. This provision is designed to assure that the supervision of an investment bank holding company by the SEC is a meaningful option. Non-U.S. financial institutions supervisors, when reviewing regulatory applications or notices submitted by a U.S. financial institution supervised in the United States as an investment bank holding company by the SEC under section 231, shall treat the SEC as the principal U.S. consolidated home country supervisor of such financial institution on the same basis and terms as if the Federal Reserve Board were the principal U.S. consolidated home country supervisor.

Conference Substitute: The Senate recedes with an amendment. The Conferees eliminated the authority of the SEC to regulate investment bank holding company capital.

SUBTITLE D - BANKS AND BANK HOLDING COMPANIES

Senate Position: No provision.

House Position: The House amendment requires the SEC to consult and coordinate comments with the appropriate Federal banking regulators before any action or rendering any opinion with respect to the manner in which an insured depository institution or insured depository holding company reports loan loss reserves.

Conference Substitute: The Senate recedes to the House provision. The Conferees note that the SEC's actions with respect to the reporting of loan loss reserves by certain insured depository institutions did not reflect adequate consultation with the Federal banking agencies with respect to potential implications on the safety and soundness of the Federal deposit insurance fund. The Conferees expect that this provision will facilitate better coordination and decision-making by the SEC in this area.

TITLE III - INSURANCE

SUBTITLE A - STATE REGULATION OF INSURANCE

Senate Position: The Senate bill contains a number of provisions intended to preserve State regulation of insurance.

House Position: The House amendment similarly contains a number of provisions intended to preserve and enhance State regulation of insurance.

Conference Substitute: The Senate receded to the House with an amendment.

In general, Subtitle A of Title III reaffirms that States are the regulators for the insurance activities for all persons, including acting as the functional regulator for the insurance activities of federally chartered banks. This functional regulatory power is subject to section 104 of Title I, however, which sets forth the appropriate balance of protections against discriminatory actions. Federally chartered banks and their subsidiaries are prohibited from underwriting insurance, except for authorized products. A rule of construction was added by the Conference Committee to prevent evasion of State insurance regulation by foreign reinsurance subsidiaries or offices of domestic banks, clarifying that providing insurance (including reinsurance) outside of the United States to indemnify an insurance product or company in a State shall be considered to be providing insurance as principal in that State.

Federally chartered banks are prohibited from engaging in any activity involving the underwriting or sale of title insurance, except that national banks may sell title insurance products in any State in which state-chartered banks are authorized to do so (other than through a "wild card provision"), so long as such sales are undertaken "in the same manner, to the same extent, and under the same restrictions" that apply to such state-chartered banks. Certain currently and lawfully conducted title insurance activities of banks are grandfathered, and existing State laws prohibiting all persons from providing title insurance are protected.

An expedited and equalized dispute resolution mechanism is established to guide the courts in deciding conflicts between Federal and State regulators regarding insurance issues. The "without unequal deference" standard of review does not apply to State regulation of insurance agency activities that were issued before September 3, 1998 (other than those protected by the scope of the safe harbor provision of section 104).

The Federal banking agencies are required to issue final consumer protection regulations within one year, to provide additional safeguards for the sale of insurance by any bank or other depository institution, or by any person at or on behalf of such institution.

State laws that prevent or significantly interfere with the ability of insurers to affiliate, become an FHC, or demutualize, are preempted, except as provided in section 104(c)(2), and with respect to demutualizing insurers for the State of domicile (and as set forth in the Redomestication Subtitle). State laws limiting the investment of an insurer's assets in a depository institution are also preempted, except that an insurer's State of domicile may limit such investment as provided.

The Federal banking agencies and the State insurance regulators are directed to coordinate efforts to supervise companies that control both depository institutions and persons engaged in the business of insurance, and to share, on a confidential basis, supervisory information including financial health and business unit transactions. The agencies are further directed to provide notice and to consult with the State regulators before taking actions which effect any affiliates engaging in insurance activities. A banking regulator is not required to provide confidential information to a State insurance regulator unless such State regulator agrees to keep the information in confidence and make all reasonable efforts to oppose disclosure of such information. Conversely, Federal banking regulators are directed to treat as confidential any information received from a State regulator which is entitled to confidential treatment under State law, and to make similar reasonable efforts to oppose disclosure of the information.

SUBTITLE B - REDOMESTICATION OF MUTUAL INSURERS

Senate Position: No provision.

House Position: The House bill allows mutual insurance companies to redomesticate to another state and reorganize into a mutual holding company or stock company. It only applies to insurers in States which have not established reasonable terms and conditions for allowing mutual insurance companies to reorganize into a mutual holding company. All licenses of the insurer are preserved, and all outstanding policies, contracts, and forms remain in full force. A redomesticating company must provide notice to the state insurance regulators of each State for which the company is licensed. A mutual insurance company may only redomesticate under this Subtitle if the State insurance regulator of the new (transferee) domicile affirmatively determines that the company's reorganization plan meets certain reasonable terms and conditions: the reorganization is approved by a majority of the company's board of directors and voting policyholders, after notice and disclosure of the reorganization and its effects on policyholder contractual rights; the policyholders have equivalent voting rights in the new mutual holding company as compared to the original mutual insurer; any initial public offering of stock shall be in accordance with applicable securities laws and under the supervision of the State insurance regulator of the transferee domicile; the new mutual holding company may not award any stock options or grants to its elected officers or directors for six months; all contractual rights of the

policyholders are preserved; and the reorganization is approved as fair and equitable to the policyholders by the insurance regulators of transferee domicile.

Conference Substitute: The Senate receded to the House with an amendment.

SUBTITLE C - NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS

Senate Position: The Senate bill contains a sense of the Congress statement that States should provide for a uniform insurance agent and broker licensing system.

House Position: The House bill encourages the States to establish uniform or reciprocal requirements for the licensing of insurance agents. If a majority of the States do not establish uniform or reciprocal licensing provisions within a three-year period (as determined by the National Association of Insurance Commissioners ["NAIC"]), then the National Association of Registered Agents and Brokers ("NARAB") would be established as a private, non-profit entity managed and supervised by the State insurance regulators. State insurance laws and regulations shall not be affected except to the extent that they are inconsistent with a specific requirement of the Subtitle. Membership in NARAB is voluntary and does not affect the rights of a producer under each individual state license. Any state-licensed insurance producer whose license has not been suspended or revoked is eligible to join NARAB. NARAB shall be base membership criteria on the highest levels insurance producer qualification set by the States on standards such as integrity, personal qualification, education, training, and experience. NARAB members shall continue to pay the appropriate fees required by each State in which they are licensed, and shall renew their membership annually. NARAB may inspect members records, and revoke a membership where appropriate. NARAB shall establish an Office of Consumer Complaints, which shall have a toll-free phone number (and Internet website) to receive and investigate consumer complaints and recommend disciplinary actions. The Office shall maintain records of such complaints, which shall be made available to the NAIC and individual State insurance regulators, and shall refer complaints where appropriate to such regulators.

If the NAIC determines that the States have not met the uniformity or reciprocity requirements, then the NAIC has two years to establish NARAB. The NAIC shall appoint NARAB's board of directors, some of whom must have significant experience with the regulation of commercial insurance lines in the 20 States with the most commercial lines business. If within the time period allotted for NARAB's creation, the NAIC has still not appointed the initial board of directors for NARAB, then the initial directors shall be the State insurance regulators of the seven States with the greatest amount of commercial lines insurance. NARAB's bylaws are required to be filed with the NAIC, taking effect 30 days after filing unless disapproves by the NAIC as being contrary to the public interest or requiring a public hearing. The NAIC may require NARAB to adopt or repeal additional bylaws or rules as it determines appropriate to the public interest. The NAIC is given the responsibility of overseeing NARAB, and is authorized to examine and inspect NARAB's records, and require NARAB to furnish it with any reports.

If at the end of two years after NARAB is required to be established, (1) a majority of the States representing at least 50% of the total commercial-lines insurance premiums in the United States have not established uniform or reciprocal licensing regulations, or (2) the NAIC has not approved NARAB's bylaws or is unable to operate or supervise NARAB (or if NARAB is not conducting its activities under this Act), then NARAB shall be created and supervised by the President, and shall exist without NAIC oversight. The President shall appoint NARAB's board, with the advice and consent of the Senate, from lists of candidates submitted by the NAIC. If the President determines that NARAB's board is not acting in the public interest, the President may replace the entire board with new members (subject to the advice and consent of the Senate). The President may also suspend the effectiveness of any rule or action by NARAB which the President determines is contrary to the public interest. NARAB shall report annually to the President and Congress on its activities.

State laws regulating insurance licensing that discriminate against NARAB members based on non-residency are preempted, as well as State laws and regulations which impose additional licensing requirements on non-resident NARAB members beyond those established by the NARAB board (pursuant to this Subtitle), except that State unfair trade practices and consumer protection laws are protected from preemption, including counter-signature requirements. NARAB is required to coordinate its multistate licensing with the various States. It is also required to coordinate with the States on establishing a central clearinghouse for license issuance and renewal, and for the collection of regulatory information on insurance producer activities. NARAB shall further coordinate with the NASD to facilitate joint membership. Any dispute involving NARAB shall be brought in the appropriate U.S. District Court under federal law, after all administrative remedies through NARAB and the NAIC have been exhausted.

Conference Substitute: The Senate receded to the House.

SUBTITLE D - RENTAL CAR AGENCY INSURANCE ACTIVITIES

Senate Position: The Senate bill provides that the requirements under section 104 with respect to mandatory licensing do not apply to persons who offer insurance connected with a short term motor vehicle rental so long as the State does not require such licensing.

House Position: The House bill creates a Federal presumption for a three-year period that no State law imposes any licensing, appointment, or education requirements on persons who rent motor vehicles for a period of 90 days or less and sell insurance to customers in connection with the rental transaction. This presumption shall not apply to a State statute, the prospective application of a statutorily-authorized final State regulation or order interpreting a State statute, or the prospective application of a court judgment interpreting or applying a State statute, if such State statute or final State regulation or order specifically and expressly regulates (or exempts from regulation) persons who solicit or sell such short term vehicle rental insurance. This presumption shall apply to the retroactive application of a final State regulation or order interpreting a general State insurance licensing statute, or the retroactive application of a court

judgment interpreting or applying a general State insurance licensing statute, with respect to the regulation of persons who solicit or sell such short term vehicle rental insurance.

Conference Substitute: The Senate receded to the House.

SUBTITLE E - CONFIDENTIALITY

Senate Position: No provision.

House Position: The House bill requires insurance companies and their affiliates to protect the confidentiality of individually identifiable customer health and medical and genetic information. Such companies may only disclose such information with the consent of the customer or for statutorily specified purposes.

Conference Substitute: The House receded to the Senate.

TITLE IV

UNITARY THRIFT HOLDING COMPANY PROVISIONS

Sec. 401. Prohibition on new unitary savings and loan holding companies.

Senate Position: The Senate bill, at section 601(a), amends the Home Owners' Loan Act to prohibit (except for corporate reorganizations) new unitary savings and loan holding companies from engaging in nonfinancial activities or affiliating with nonfinancial entities. The prohibition applies to a company that becomes a unitary savings and loan holding company pursuant to an application filed with the OTS after May 4, 1999. A grandfathered unitary thrift holding company (one in existence or applied for on or before May 4, 1999) retains its authority to engage in nonfinancial activities. The Senate bill, at section 601(b), allows mutual savings and loan holding companies to engage in new financial activities authorized under the Gramm-Leach-Bliley Act.

House Position: The House bill, at section 401(a), prohibits new unitary thrift holding companies after the grandfather date of March 4, 1999, from engaging in nonfinancial activities or from affiliating with a nonfinancial entity. The provision also allows a nonfinancial company to purchase a grandfathered unitary thrift holding company upon approval of an application filed with the OTS and approval or no objection to a notice filed with the Federal Reserve Board. The House bill, at section 401(b), permits a mutual holding company to engage in activities permissible for multiple stock holding companies and permits unitary mutual savings and loan holding companies to engage in the new financial activities authorized for FHCs.

Conference Substitute: The House receded to the Senate.

TITLE V - PRIVACY

SUBTITLE A - DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

Senate Position: No provision.

House Position: The House bill contained important provisions providing consumers with new protections with respect to the transfer and use of their nonpublic personal information by financial institutions.

Among other things, the House bill directed relevant regulators to establish comprehensive standards for ensuring the security and confidentiality of consumers' personal information maintained by financial institutions; allowed customers of financial institutions to "opt out" of having their personal financial information shared with nonaffiliated third parties, subject to certain exceptions; barred financial institutions from disclosing customer account numbers or similar forms of access codes to nonaffiliated third parties for telemarketing or other direct marketing purposes; and mandated annual disclosure – in clear and conspicuous terms – of a financial institution's policies and procedures for protecting customers' nonpublic personal information.

Conference Substitute: The Senate receded to the House with an amendment.

The amendment modified the House position in the following ways:

1. The Federal functional regulators, the Secretary of the Treasury, and the FTC, in consultation with State insurance authorities, are directed to prescribe such regulations as may be necessary to carry out the purposes of the privacy subtitle. The House bill had called for a joint rulemaking. The relevant agencies are required to consult and coordinate with one another in order to assure to the maximum extent possible that the regulations each prescribes are consistent and comparable with those prescribed by the other agencies. It is the hope of the Conferees that State insurance authorities would implement regulations necessary to carry out the purposes of this title and enforce such regulations as provided in this title.
2. To address the concern that the House bill failed to provide a mechanism for enforcing the subtitle's provisions against non-financial institutions, the Conferees agreed to clarify that the FTC's enforcement authority extends to such entities.
3. The Conferees agreed to clarify the relation between Title V's privacy provisions and other consumer protections already in law, by stating that nothing in the title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of the title regarding whether information is transaction or experience information under section 603 of that Act.
4. At the request of the Conferees from the Committee on Agriculture, the Conferees agreed to exclude from the scope of the privacy title any person or entity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the

- Commodity Exchange Act, as well as the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971. The Conferees also excluded from this subtitle institutions chartered by Congress specifically to engage in securitization or secondary market transactions, so long as such institutions do not sell or transfer nonpublic personal information to nonaffiliated third parties. The Conferees granted the exception based on the understanding that the covered entities do not market products directly to consumers.
5. The Conferees agreed to clarify that a financial institution's annual disclosure of its privacy policy to its customers must include a statement of the institution's policies and practices regarding the sharing of nonpublic personal information with affiliated entities, as well as with nonaffiliated third parties.
 6. The Conferees agreed to provide that the disclosure of nonpublic personal information contained in a consumer report reported by a consumer reporting agency does not fall within section 502's notice and opt out requirements.
 7. The Conferees agreed to modify the statutory definition of "nonpublic personal information" by clarifying that such term does not encompass any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.
 8. The Conferees agreed to exclude disclosures to consumer reporting agencies from section 502(d)'s limitations on the sharing of account number information.
 9. The Conferees agreed to give the relevant regulatory agencies the authority to prescribe exceptions to subsections (a) through (d) of section 502, rather than just sections 502(a) and (b), as provided for in the House bill.
 10. The Conferees inserted language stating that the privacy provisions in the subtitle do not supersede any State statutes, regulations, orders, or interpretations, except to the extent that such State provisions are inconsistent with the provisions of the subtitle, and then only to the extent of the inconsistency. The amendment provides that a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this subtitle, as determined by the FTC in consultation with the agency or authority with jurisdiction under section 505(a) over either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.
 11. Section 506 authorizes the Federal banking agencies and the National Credit Union Administration to prescribe joint regulations governing the institutions under their jurisdiction with respect to the Fair Credit Reporting Act; the Conferees agreed to an amendment giving the Board of Governors of the Federal Reserve the authority to prescribe FCRA regulations governing bank holding companies and their affiliates.
 12. The Conferees agreed to modify section 502(e)(5), to include the Secretary of the Treasury as a "law enforcement agency" for the purposes of the Bank Secrecy Act, to avoid unintended interference with the existing functions of the Treasury's anti-money laundering unit, the Financial Crimes Enforcement Network ("FinCEN").

The Conferees wish to ensure that smaller financial institutions are not placed at a

competitive disadvantage by a statutory regime that permits certain information to be shared freely within an affiliate structure while limiting the ability to share that same information with nonaffiliated third parties. Accordingly, in prescribing regulations pursuant to this subtitle, the agencies and authorities described in section 504(a)(1) should take into consideration any adverse competitive effects upon small commercial banks, thrifts, and credit unions. In issuing regulations under section 503, the regulators should take into account the degree of consumer access to disclosure by electronic means.

In exercising their authority under section 504(b), the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer.

The Conferees recognize the need to foster technological innovation in the financial services and related industries. The Conferees believe that the development of new technologies that facilitate consumers' access to the broad range of products and services available through online media should be encouraged, provided that such technologies continue to incorporate safeguards for consumer privacy.

SUBTITLE B - FRAUDULENT ACCESS TO FINANCIAL INFORMATION

Senate Position: The Senate bill contained provisions making it a Federal crime – punishable by up to five years in prison – to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed, customer information of a financial institution through fraudulent or deceptive means, such as by misrepresenting the identity of the person requesting the information or otherwise misleading an institution or customer into making unwitting disclosures of such information. In addition, it provided for a private right of action and enforcement by state attorneys general.

House Position: Similar provisions, with no private right of action or enforcement by State Attorneys General.

Conference Substitute: The Senate receded to the House with an amendment.

The amendment provided that authority for enforcing the subtitle would be placed in the FTC, the Federal banking agencies and the National Credit Union Administration (for enforcement of these provisions with respect to compliance by depository institutions within their jurisdiction).

TITLE VI - FEDERAL HOME LOAN BANK SYSTEM MODERNIZATION

The Senate and House bills reforms the Federal Home Loan Bank (“FHLBank”) System in several important ways. Mandatory FHLBank membership for Federal savings associations is eliminated, in order to provide completely voluntary membership. Small bank members are given expanded access to FHLBank advances. Governance of the FHLBanks is decentralized from the Federal Housing Finance Board (“FHFB”) to the individual FHLBanks. The Resolution Funding Corporation (“REFCORP”) obligation of the FHLBanks, stemming from the savings and loan crisis, is changed from a fixed dollar amount to a fixed percentage of annual net earnings. The Senate bill directs the General Accounting Office to study FHLBank capital and the House bill establishes a new capital structure for the FHLBanks. The conference committee addressed three of these major areas.

Sec. 604. Advances to members; collateral.

Senate Position: The Senate bill authorizes community financial institutions (FDIC-insured depository institutions with assets less than \$500 million) to obtain long-term FHLBank advances for lending to small businesses, small farms, and small agri-businesses. Eligible collateral for community financial institutions receiving any FHLBank advances could include secured loans for small business, agriculture, or securities representing a whole interest in such loans.

House Position: The House bill authorizes community financial institutions to obtain long-term FHLBank advances for small business, agricultural, rural development, or low-income community development lending. Eligible collateral for community financial institutions receiving any FHLBank advances could include secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans. Such advances-funded non-housing loans are treated as qualified thrift investments in determining required FHLBank stock purchases for community financial institutions that are not qualified thrift lenders (“QTLs”).

Conference Substitute: The House receded to the Senate on the purposes and collateral for advances to community financial institutions. Greater stock purchases required of FHLBank members, that are not QTLs, when they receive advances are eliminated as is the requirement that such members only apply for advances for housing finance purposes. A priority for making advances to QTL members and a 30% limit on total advances to non-QTL members are also removed. Restrictions on obtaining new advances and having to repay advances after three years, applicable to savings associations that are not QTLs, are eliminated.

Sec. 606. Management of FHLBanks.

Senate Position: The Senate bill changed the term of elected FHLBank directors from two to four years to make the term the same as for appointed directors. It transferred from the FHFB to the individual FHLBanks authority over a number of operational areas. It also gave the FHFB the same enforcement authority over FHLBanks and their executive officers and directors as the Federal banking agencies and the Office of Federal Housing Enterprise Oversight have under their statutes.

House Position: The House bill contained the same provisions. It also empowered the FHFB to address any capital insufficiencies resulting from voluntary membership and eliminated the 20:1 advances to stock ratio limit for a FHLBank member.

Conference Substitute: The Conference set terms for both elected and appointed directors at 3 years (staggered with approximately one-third of the terms expiring each year). A FHLBank's board of directors is authorized to elect by majority vote the board's Chairperson and Vice Chairperson. The term of office for the Chairperson and Vice Chairperson is two years. The annual salaries of FHLBank directors may not exceed specified amounts plus reimbursement of expenses. The maximum amounts are: Chairperson--\$25,000; Vice Chairperson--\$20,000; and other directors--\$15,000. FHLBank directors may reside outside the FHLBank district if they are an officer or director of a member institution located in the district. The Senate receded to the House regarding the provisions on capital insufficiencies and the advances to stock ratio limit.

Sec. 608. Capital structure of the FHLBanks.

Senate Position: The Senate bill directs the General Accounting Office to submit to Congress within one year of enactment a study on possible revisions to the FHLBanks' capital structure, including the need for more permanent capital, a statutory leverage ratio, and a risk-based capital structure. GAO would also study the impact such revisions might have on the FHLBanks' operations, including the REFCORP payment obligation.

House Position: The House bill establishes a new capital structure for the FHLBanks. The FHLBanks were authorized to issue three classes of stock: Class A (redeemable on 6-months notice), Class B (redeemable on 5-years notice), and Class C (nonredeemable). FHLBanks were required to meet a 5% leverage minimum tied to total capital and a risk-based requirement tied to permanent capital. Permanent capital included Class C stock, retained earnings, and up to 1% of a FHLBank's assets in Class B stock. Total capital included permanent capital plus Class A stock, Class B stock (other than what counted toward permanent capital), and a general allowance for losses. A FHLBank must at all times comply with both the leverage and risk-based capital requirements. In determining compliance with the 5% minimum leverage ratio, Class A stock was counted at paid-in value, Class B stock was weighted at 1.5 times paid-in value, and Class C stock and retained earnings at 2.0 times. The current capital structure of the FHLBanks must be maintained until the new capital requirements are fully implemented. Within one year of enactment, the FHFB must issue implementing regulations. The board of directors

of each FHLBank must develop a capital plan, subject to FHFB approval. The FHLBanks have up to three years to carry out their plans.

Conference Substitute: The Senate receded to the House with an amendment regarding a new capital structure. Two classes of stock are authorized: Class A (redeemable on 6-months notice) and Class B (redeemable on 5-years notice). FHLBanks are required to meet a 5% leverage minimum tied to total capital and a risk-based requirement tied to permanent capital. Permanent capital includes Class B stock and retained earnings. Total capital includes permanent capital plus Class A stock, generally. In determining compliance with the 5% minimum leverage ratio, Class A stock is counted at paid-in value and Class B stock and retained earnings are weighted at 1.5 times; however, a FHLBank's total capital, determined without taking into account any multiplier, must not be less than 4% of total assets.

The weighting provision is included to encourage the FHLBanks to build more permanent, longer-term capital. Using the capital multiplier, the paid-in value of outstanding Class A stock plus 1.5 times the paid-in value of outstanding Class B stock and retained earnings must be at least 5% of total assets. Using no weighting factor, total capital must be at least 4% of total assets. For example, a FHLBank with \$100 million in assets would comply with \$5 million in Class A capital stock or \$2 million in Class A capital stock and an unweighted \$2 million in Class B capital stock and retained earnings (which would constitute \$3 million on a weighted basis).

A FHLBank's permanent capital, used to measure its compliance with the risk-based capital requirement, consists of the amounts paid by members for Class B stock and the amount of the FHLBank's retained earnings. The amount of retained earnings that may be included in permanent capital must be determined in accordance with generally accepted accounting principles (GAAP), which precludes the use of non-GAAP regulatory accounting standards for measuring retained earnings. The amount of Class B stock that is to be included in permanent capital is the full amount paid by a member to the FHLBank for the purchase of Class B stock.

A FHLBank's total capital, used to measure its compliance with the statutory leverage ratio, consists of permanent capital, the amounts paid by members for Class A stock, any general allowance for losses (consistent with GAAP and subject to FHFB regulation), and any other amounts from sources determined by the FHFB to be available to absorb losses incurred by the FHLBank and appropriate for including as capital. Any loss reserve that is held or established against a specific asset of the FHLBank is expressly prohibited from being included in total capital, as such reserves are not capable of absorbing potential losses on other assets.

In recognition of Congressional concern regarding the Financial Management and Mission Achievement ("FMMA") rule recently proposed by the FHFB, the Chairman of the FHFB sent a letter on October 18, 1999 to the Senate and House Banking Committee Chairmen (inserted below) providing assurances that the proposal would be withdrawn, upon enactment of this legislation. It is the conference committee's understanding and expectation that the FMMA will be withdrawn and that the FHFB will take no action to promulgate proposed or final regulations limiting assets or advances beyond those currently in effect until the statutorily

required FHLBank System capital rules are finalized and the statutory period for submission of capital plans by the FHLBanks has expired. If and when the FHFB develops a new FMMA, or similar rules, we expect that the FHFB will provide ample opportunity for public comment and hearings. It is the desire of the conference committee that the FHFB consult with the Banking Committees regarding both the capital regulations and any financial management and/or mission related rules prior to issuing them in proposed form.

TITLE VII - OTHER PROVISIONS

SUBTITLE A - ATM FEE REFORM

Senate Position: The Senate bill at Title VII requires automated teller machine (“ATM”) operators who impose a fee for use of an ATM by a noncustomer to post a notice on the machine and on the screen that a fee will be charged and the amount of the fee. This notice must be posted before the consumer is irrevocably committed to completing the transaction. A paper notice issued from the machine may be used in lieu of a posting to the screen. No surcharge may be imposed unless the notices are made and the consumer elects to proceed with the transaction. A notice is required when ATM cards are issued that surcharges may be imposed by other parties when transactions are initiated from ATMs not operated by the card issuer. ATM operators are exempt from liability if properly placed notices on the machines are subsequently removed, damaged, or altered by anyone other than the ATM operator.

House Position: Same.

Conference Substitute: The House receded to the Senate with an amendment.

The amendment grants a temporary exemption for those older machines that are unable to provide certain of the notices required.

SUBTITLE B—COMMUNITY REINVESTMENT

Sec. 711. CRA sunshine requirements.

Senate Position: Section 312 of the Senate bill amends the Federal Deposit Insurance Act by creating a new Section 46, to require full disclosure of agreements entered into between insured depository institutions or their affiliates and nongovernmental entities or persons made pursuant to or in connection with the fulfillment of the CRA. The section does not confer any authority on the Federal banking agencies to enforce the provisions of these agreements.

House Position: No provision.

Conference Substitute: The House receded to the Senate, with an amendment.

As recommended by the Conferees, the provision requires full disclosure of agreements, as defined in this section, between an insured depository institution or affiliate and a nongovernmental entity or person where the agreement is made pursuant to or in connection with the CRA, involving funds or other resources of an insured depository institution or affiliate.

The provision is not intended to define as a CRA agreement an individual mortgage loan (although it could apply to agreements involving, for example, parties acting as mortgage intermediaries or facilitators), or other specific contract to an individual, business, farm, or other entity, where funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of borrowed funds to other parties. In addition, the scope of the provision does not extend to an agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA. This exception to the coverage could include, for example, service organizations such as civil rights groups, community groups providing housing or other services in low-income neighborhoods, the American Legion, community theater groups, and so forth. The Federal Reserve Board may prescribe regulations to provide further exemptions consistent with the purposes of the provision.

In defining the agreements to which this provision would apply, the legislation assigns to the appropriate Federal banking agency the responsibility to identify a list of factors that the agency determines have a material impact on the agency's decision to approve or disapprove an application for a deposit facility or to assign a rating in an examination under the CRA. It is expected that the regulator will include in such list a full enumeration of the relevant factors that the agency reviews and considers in examining the performance of an insured financial institution in connection with the CRA, including any and all items a regulator would attach importance to in determining the evaluation under the act of the performance of a financial institution.

The Conferees note that while an agency may not give a great deal of weight to a mere agreement to perform certain CRA-related activities, *per se*, the agency does look carefully at the activities that the institution may have actually performed in fact pursuant to such an agreement. The disclosure and reporting requirements of this section apply to agreements defined in subsection (a) in either event.

As a general rule, the parties are required to disclose fully such agreements and make them available to the public and to the Federal banking agencies.

In addition, parties to each CRA agreement are required to report at least once each year on the use of resources provided pursuant to each agreement. A bank would file its report directly with its Federal regulator. A nongovernmental party is required to file its report with the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to the agreement, either directly with the agency or via the insured

depository institution, which would be required promptly to transmit the report to the Federal banking agency.

The Federal banking agencies are directed, in implementing regulations under this provision, to minimize the regulatory burden on reporting parties. One way in which to accomplish this goal would be wherever possible and appropriate with the purposes of this section, to make use of existing reporting and auditing requirements and practices of reporting parties, and thus avoid unnecessary duplication of effort. The Managers intend that, in issuing regulations under this section, the appropriate Federal supervisory agency may provide that the nongovernmental entity or person that is not an insured depository institution may, where appropriate and in keeping with the provisions of this section, fulfill the requirements of subsection (c) by the submission of its annual audited financial statement or its Federal income tax return.

Sec. 712. Small bank regulatory relief.

Senate Position: The Senate provision amended the CRA to exempt from the provisions of that Act banks and savings and loan associations with total assets less than \$100 million and that are located in nonmetropolitan areas.

House Position: No provision.

Conference Substitute: The House receded to the Senate provision with an amendment.

The provision directs that “regulated financial institutions” with aggregate assets not exceeding \$250 million will be subject to routine examinations under the CRA as follows: (i) not more than once every 60 months if the institution received a rating of ‘outstanding record of meeting community credit needs’ at its most recent examination; (ii) not more than once every 48 months if the institution received a rating of ‘satisfactory record of meeting community credit needs’ at its most recent examination; and (iii) as deemed necessary by the appropriate Federal banking agency if the institution received a rating of less than ‘satisfactory record of meeting community credit needs’ at its most recent examination. The provision also states that the Federal banking agencies may subject an institution to more frequent or less frequent examinations for reasonable cause. A regulated financial institution shall remain subject to examination under this title in connection with an application for a deposit facility.

Sec. 713 -715. Federal Reserve Board and Treasury studies, Impact on CRA.

Senate Position: No provision.

House Position: The House bill at Section 110 requires a study by the Secretary of the Treasury, in consultation with the Federal banking agencies, of the extent to which adequate services are being provided as intended by the CRA, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment

of the Gramm-Leach-Bliley Act. The report must be submitted to the Congress within two years.

Conference Substitute: The Senate receded to the House with an amendment directing, in addition, that the Federal Reserve Board conduct a comprehensive study of the CRA, in consultation with the Chairman and Ranking Member of the House Banking and Financial Services Committee and the Chairman and Ranking Member of the Senate Banking, Housing, and Urban Affairs Committee. The study is to focus on default rates, delinquency rates, and the profitability of loans made in conformity with that Act. The report must be submitted to the House and Senate Banking Committees no later than March 15, 2000. The provision also directs that the report and all of the supporting data be made available at the same time to the public by the Federal Reserve Board, to the extent that the data are not confidential.

The Conferees recommended further amending the House study with an amendment permitting the Secretary of the Treasury to submit to the Congress by March 15, 2000, a baseline report in addition to the final report as required in the House provision. The purpose of the baseline report is to give a set of data against which the Secretary will be able to measure change by the end of the two-year reporting period.

The Conferees also recommended an amendment to the House language to state that nothing in the Gramm-Leach-Bliley Act shall be construed to repeal any provision of the CRA.

SUBTITLE C - OTHER REGULATORY IMPROVEMENTS

Sec. 721. Expanded small bank access to S corporation treatment.

Senate Position: The Senate bill at section 302 requires the GAO to study and report to Congress within six months of the date of enactment on certain revisions to S corporation rules permitting greater access by community banks to S corporation treatment.

House Position: No provision.

Conference Substitute: The House receded to the Senate.

Sec. 722. Plain Language requirement for Federal banking agency rules.

Senate Position: The Senate bill at section 306 directs the Federal banking agencies to use plain language in all proposed and final rule-makings published by the agency in the Federal Register after January 1, 2000, and to report to Congress by no later than March 1, 2001 on how they have complied with the plain language requirement.

House Position: No provision.

Conference Substitute: The House receded to the Senate.

Sec. 723. Retention of "Federal " in name of converted Federal savings associations.

Senate Position: The Senate bill at section 307 would permit Federal savings associations that convert to national or state bank charters to keep the word "Federal" in their names.

House Position: Same.

Conference Substitute: The Senate receded to the House.

Sec. 724. Control of Bankers= Banks.

Senate Position: The Senate bill at section 310 allows one or more thrift institutions to own a state-chartered bank or trust company, whose business is restricted to accepting deposits from thrift institutions or savings banks, deposits arising from the corporate business of the thrift institutions or savings banks that own the bank or trust company, or deposits of public funds.

House Position: No provision.

Conference Substitute: The House receded to the Senate.

Sec. 725. Provision of technical assistance to microenterprises.

Senate Position: The Senate bill at section 316 establishes a grant program to fund nonprofit microenterprise development organizations, programs, collaboratives, or intermediaries engaged in (1) providing training and technical assistance to low-income and disadvantaged entrepreneurs interested in starting or expanding their own businesses; (2) building the capacity of organizations that serve low-income and disadvantaged entrepreneurs; and (3) supporting research and development aimed at identifying and promoting training and technical assistance programs that effectively serve low-income and disadvantaged entrepreneurs.

House Position: No provision.

Conference Substitute: The House receded to the Senate with an amendment.

While the Senate bill made the new microenterprise program a part of the Treasury Department=s Community Development Financial Institutions program, the Conferees chose to have the new program administered by the Small Business Administration.

Sec. 726. Federal Reserve audits.

Senate Position: The Senate bill at section 317 requires annual outside independent accounting firm audits of the Federal Reserve Banks and the Federal Reserve Board. In addition, the bill changes the definitions and rules that apply to the pricing of Federal Reserve System services under the Monetary Control Act.

House Position: No provision.

Conference Substitute: The House receded to the Senate with an amendment in the nature of a substitute. The substitute provision requires the Federal Reserve Board to order an annual independent audit of the financial statements of each Federal Reserve Bank and of the Board.

Sec. 727. Authorization to release reports.

Senate Position: No provision.

House Position: The House bill at section 132 permits the Federal Reserve Board, at its discretion, to furnish exam reports and other confidential supervisory information concerning State member banks or other entities it examines to any Federal or State authorities with supervisory authority over an examined entity, to officers, directors, or receivers of the entity, or any other person that the Federal Reserve Board determines is proper. In addition, the House bill includes the Commodity Futures Trading Commission under definitions in the Right to Financial Privacy Act.

Conference Substitute: The Senate receded to the House with an amendment.

The amendment adds to the provision allowing the disclosure of reports and information by applying certain confidentiality requirements and procedures for disclosure.

Sec. 728. General Accounting Office study of conflicts of interest.

Senate Position: No provision.

House Position: The House bill at section 193 requires the Comptroller General of the GAO to study the conflict of interest faced by the Federal Reserve Board between its role as a primary regulator of the banking industry and its role as a vendor of services. Specifically, the GAO should address the conflict between the Board's role as a regulator of the payment system and its role as a competitor with private sector providers of payment services, and how best to resolve that conflict. The study is due one year after enactment of the legislation.

Conference Substitute: The Senate receded to the House.

Sec. 729. Study and report on adapting existing legislative requirements to on-line banking and lending.

Senate Position: No provision.

House Position: The House bill at section 195 requires the Federal banking agencies to conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be face-to-face contact, and report their recommendations on adapting those existing requirements to online banking and lending. The

report, with any recommended legislative or regulatory action, is due one year after the date of enactment of the legislation.

Conference Substitute: The Senate receded to the House with an amendment changing the due date of the study to two years after date of enactment.

Sec. 730. Clarification of source of strength doctrine.

Senate Position: No provision.

House Position: The House bill at section 197 enhances the source of strength doctrine by, in certain circumstances, protecting the Federal banking agencies and the deposit insurance funds from claims brought by the bankruptcy trustee of a depository institution holding company or other person for the return of capital infusions.

Conference Substitute: The Senate receded to the House with an amendment in the nature of a substitute.

The substitute narrows and clarifies the circumstances under which a Federal banking agency would be protected from a claim. First, it clarifies that the transferred assets must be those of an affiliate or a controlling shareholder of an insured depository institution. The House amendment did not so specify. Second, section 730 provides that the transfer must be to or for the benefit of an insured depository institution and that it must be made by an affiliate or controlling shareholder of such insured depository institution. The House amendment did not include such clarifying language. Third, section 730 specifies that no person may bring a claim against a Federal banking agency for monetary damages, return of assets, or for other legal or equitable relief in connection with such transfer, consistent with certain limitations. The House amendment only referred to claims for monetary damages or for the return of assets or other property. Fourth, section 730 adds a definition of the term “claim.” For purposes of this provision, a claim is defined as a cause of action based on Federal or State law providing for the avoidance of preferential or fraudulent transfers or conveyances, or providing for similar remedies. The definition, however, explicitly excepts any claim based on actual intent to hinder, delay or defraud pursuant to such fraudulent transfer or conveyance law.

This section does not limit the right of a depository institution, a controlling stockholder, or a depository institution holding company to seek direct review of an order or directive of a Federal banking agency under the Administrative Procedure Act in accordance with various banking statutes. In addition, the provision does not limit the rights of a claimant to bring suit against the United States for a breach of contract or a taking under the 5th Amendment to the Constitution.

Sec. 731. Interest rates and other charges at interstate branches.

Senate Position: No provision.

House Position: The House bill at section 198 provides loan pricing parity among interstate banks. Specifically, if an interstate bank can charge a particular interest rate, then a local bank in the State into which the interstate bank has branched, may charge a comparable rate.

Conference Substitute: The Senate receded to the House.

Sec. 732. Interstate branches and agencies of foreign banks.

Senate Position: The Senate bill at section 313 allows a Federal or State agency of a foreign bank to upgrade to a branch with the approval of the appropriate chartering authority and the Federal Reserve Board.

House Position: Same.

Conference Substitute: The House receded to the Senate.

Sec. 733. Fair treatment of women by financial advisers.

Senate Position: No provision.

House Position: The House bill at section 198B establishes the sense of the Congress that estate planners, trust officers, investment advisers, and other financial planners and advisors should eliminate examples in their training materials which portray women as incapable and foolish, and develop fairer and more balanced presentations that eliminate outmoded and stereotypical examples which lead clients to take actions that are financially detrimental to their wives and daughters.

Conference Substitute: The Senate receded to the House with an amendment in the nature of a substitute.

The substitute establishes the sense of the Congress that individuals offering financial advice and products should do so in a nondiscriminatory, nongender-specific manner.

Sec. 734. Membership of loan guarantee boards.

Senate Position: No provision.

House Position: No provision.

Conference Substitute: The Conferees adopted a provision that would modify the membership of the Emergency Steel Loan Guarantee Board and the Emergency Oil and Gas Loan Guarantee Board. Where under existing law the Chairmen of the Federal Reserve Board and SEC were designated as members, the provision permits both to designate another Member of the Board or another Commissioner as appropriate.

Sec. 735. Repeal of stock loan limit in Federal Reserve Act.

Senate Position: No provision.

House Position: The House bill at section 124 repeals the restrictions in section 11(m) of the Federal Reserve Act on loans by Federal Reserve member banks secured by stock or bond collateral. Limitations on loans to one borrower imposed pursuant to other statutory authority are not affected.

Conference Substitute: The Senate receded to the House.

Sec. 736. Elimination of SAIF and DIF Special Reserves.

Senate Position: The Senate bill at section 301 eliminates the need for the establishment of a SAIF Aspecial reserve@ which the FDIC was required to establish beginning in 1999. This revision becomes effective on the date of enactment.

House Position: Same other than the effective date.

Conference Substitute: The House receded to the Senate.

Sec. 737. Bank officers and directors as officers and directors of public utilities.

Senate Position: The Senate bill at section 309 amends the Federal Power Act to permit officers or directors of public utilities to serve as officers or directors of banks, trust companies, or securities firms, if certain safeguards against conflicts of interest are complied with.

House Position: No provision.

Conference Substitute: The House receded to the Senate.

Sec. 738. Approval for purchases of securities.

Senate Position: The Senate bill at section 315 authorizes a majority of the entire board of directors of a bank to vote on the purchase of securities from an affiliate, based on a determination that the purchase is a sound investment for the bank. Such a standard does not exist under current law, which simply requires the vote to be taken by a majority of independent directors.

House Position: No provision.

Conference Substitute: The House receded to the Senate.

Sec. 739. Optional conversion of Federal savings associations.

Senate Position: The Senate bill at section 602 allows a Federal savings association chartered prior to the date of enactment to convert into one or more national banks, subject to the approval

of the OCC, each of which may encompass one or more of the branches of the Federal savings association in one or more States.

House Position: No provision.

Conference Substitute: The House recedes to the Senate with an amendment.

The amendment would allow the conversion to State as well as national banks.

Sec. 740. Grand jury proceedings.

Senate Position: No provision.

House Position: No provision.

Conference Substitute: The Conferees adopted a provision that would permit U.S. Attorneys offices to seek a court order to provide financial institution regulatory agencies with access to grand jury material, giving State regulatory agencies parity with Federal regulatory agencies.